

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Petition for Expedited Rulemaking)
to Establish Reporting Requirements)
and Performance and Technical)
Standards for Operations Support)
Systems)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RM 9101

COMMENTS OF THE COMPETITIVE
TELECOMMUNICATION ASSOCIATION (CompTel)

CompTel, by its attorneys, and pursuant to the Commission's June 10, 1997, Public Notice (DA 97-1211), hereby comments on the petition of LCI International Telecom Corp. (LCI) and CompTel ("Petition") for an expedited rulemaking concerning the requirements governing operations support systems ("OSS") established in the Commission's *Local Competition Order*.¹ CompTel² urges the Commission to expedite initiation and conduct of

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) ("Local Competition Order"), *motion for stay denied*, 11 FCC Rcd 11754 (1996), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), *further recon. pending, appeal pending sub nom. Iowa Util. Bd. v. FCC* and consolidated cases, No. 96-3321 et al., *partial stay granted pending review*, 109 F.3d 418 (8th Cir. 1996), *order lifting stay in part* (8th Cir. Nov. 1, 1996), *motion to vacate stay denied*, 117 S. Ct. 429 (1996).

² CompTel is the leading trade association of the competitive telecommunications industry. Among its members are more than 200 providers of competitive telecommunications services, including local exchange carriers, other providers of local telecommunications services, and interexchange carriers. These companies purchase wholesale services and network elements from, and also compete with, incumbent local exchange carriers ("ILECs"). The competitive vitality of CompTel members will be affected by the extent to which incumbent local exchange carriers comply with the Commission's OSS

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a proceeding to establish uniform measurement and performance standards for OSS functions, as requested in the Petition. As detailed in the Petition, all of the Regional Bell Operating Companies ("RBOCs"), as well as other ILECs, have established a poor track record in making OSS available to local competitors on a nondiscriminatory basis, consistent with their obligations under Sections 251(c)(3) and (c)(4) of the Act.³ The Commission in its *Local Competition Order* emphasized the critical need for competitors to have nondiscriminatory access to OSS.⁴ There is no need for further debate on that point.

What is also clear, unfortunately, is that the ILECs have not satisfied their obligations regarding OSS and that more specific guidance is necessary from the Commission. As the *Local Competition Order* presciently observed, "[d]epending upon the progress made [in industry adoption of OSS standards], we will make a determination in the near future as to whether our obligations under the 1996 Act require us to issue a separate notice of proposed rulemaking or take other actions" necessary to arrive at appropriate OSS standards.⁵ The time has come for the Commission to make good on this promise. Accordingly, the Commission should commence the requested expedited rulemaking and, in view of the critical nature of OSS to the emergence of local competition, seek to complete that proceeding before the end of 1997.⁶

²(...continued)
requirements. Accordingly, CompTel, on behalf of its members, has an important stake in the action the Commission takes in response to the Petition.

³ Petition pp. 30-84.

⁴ *Local Competition Order*, 11 FCC Rcd at 15,763-68.

⁵ *Id.* at 15,768.

⁶ The Commission's authority to conduct such a rulemaking is found in Section
(continued...)

Below, CompTel comments on several key aspects raised by the *Public Notice*:

1. The Commission Should Adopt Uniform Measurement Standards and Performance Criteria

As the Petition makes plain, significant resources have been expended by new competitors in negotiations and arbitrations with ILECs regarding OSS requirements. Concomitantly, State commissions have become embroiled in numerous complex "OSS battles" in an effort to establish minimum OSS requirements. While the FCC, pursuant to its Section 251(d)(1) rulemaking authority, required access to OSS functions to be nondiscriminatory as of January 1, 1997, the Commission established no specific performance measurement standards.⁷ Unfortunately, without uniform standards, the result too often has been the establishment of no standards at all.

Given the lack of progress in the establishment of uniform standards over the past year by industry groups acting on their own, it is time for the Commission to step in and provide concrete guidance. Despite the prospects at the time the Commission released the *Local Competition Order*,⁸ national organizations are no closer to achieving uniform industry consensus than they were twelve months ago.

Uniform standards would provide immense benefit to new competitors and competition. As the Commission noted in the *Local Competition Order*, such standards "would eliminate the need for new entrants to develop multiple-interface systems, one for

⁶(...continued)
251(d)(1) of the Communications Act of 1934 (the "1934 Act"), as amended by the Telecommunications Act of 1996 (the "1996 Act"). Section 251(d)(1) empowers the FCC to establish regulations to implement the requirements of Section 251.

⁷ *Local Competition Order*, 11 FCC Rcd at 15,768.

⁸ *Id.* at 15,768 and n. 1278.

each incumbent."⁹ This will lower costs and potential administrative complexity of access to OSS functions for competitors. The ILECs, too, would have to set up one system throughout their operating territories, reducing their costs as well. Uniform standards would also enable new competitors to make measurements of each incumbent's performance that would provide a basis for direct comparison among ILECs. States, too, would be able to implement ILECs' OSS access obligations more expeditiously, concentrating their efforts and resources on enforcement. In short, the pronouncement of uniform standards by the Commission would serve quickly to topple an important entry barrier and hasten the introduction of truly competitive local services by new competitors, resulting in lower prices and higher quality service for consumers.¹⁰

2. Service Quality Measurements ("SQMs") Should Be Used Where an ILEC Has Not Yet Adopted Performance Standards for Itself.

The Petition seeks an order requiring each ILEC to identify both those OSS functions for which the ILEC has established performance standards for itself, and those for which it has not.¹¹ Obviously, where an ILEC has established performance standards, parity with those standards should be the criteria by which nondiscriminatory access by requesting telecommunications carriers to OSS functions is assessed. However, it has become apparent in the course of negotiations and arbitrations that many ILECs for numerous OSS functions

⁹ *Id.* at 15,768.

¹⁰ As the Commission noted in the *Local Competition Order*, uniform general rules complemented by specific state implementation will provide "new entrants, including small competitors, with a meaningful opportunity to compete." 11 FCC Rcd at 15,657.

¹¹ Petition p. 2. As stated in the Petition, ILECs should also be required to provide historical performance data and measurement criteria for those OSS functions for which performance standards have been adopted. *Id.*

have not established performance standards for themselves. In these situations, new competitors, the Commission, and the States must not be left to the mercy of the ILECs' failure to adopt standards in assessing performance consistent with ILEC obligations under Section 251(c). Rather, in order to ensure that reasonable and nondiscriminatory access is available for *all* OSS functions, the Commission in such circumstances should establish SQMs to serve as guidelines that ILECs must meet in providing OSS functions to new competitors.

However, the Commission must also make clear that, by a date certain a reasonably short period after establishing SQMs, the ILECs must develop performance standards for themselves for the OSS functions involved. The establishment of such standards is the only way that new competitors and regulators can enforce the requirement that the OSS functions made available to new competitors are equal to those which ILECs provide themselves.

Further, an ILEC's performance standards for itself may change over time, resulting in either improvement or relaxation. Competitors and regulators must be apprised of these changes on a timely and regular basis (and of ILECs' record of adherence to the current standards) to enable them to continue to monitor parity. Accordingly, the Commission should order ILECs to report, on a monthly basis, their current performance standards for those OSS functions for which they have established standards and data measuring their performance. Concomitantly, the ILECs should also on a monthly basis reconfirm those functions for which standards have not yet been adopted and provide data measuring their performance relative to SQMS. This will enable competitors to more accurately monitor the ILECs' compliance with parity requirements, as well as allow regulators to take corrective action if they believe that any relaxation in standards is unjustified, inconsistent with other applicable industry standards or regulatory requirements, or otherwise contrary to the public

interest. An ILEC should file its reports with both the FCC and the commissions of the States in which it provides local service as an incumbent. In addition, ILECs should be required simultaneously to post the reports electronically on the world wide web to provide competitors with easy access to the information.

3. Penalty Provisions Must Be Meaningful

The Public Notice seeks comment on appropriate penalty provisions if ILECs fail to comply with their OSS obligations.¹² CompTel submits that it is important that ILECs are on notice of simple, direct, and meaningful penalties if they fail to comply. Since the ILECs have the economic incentive to frustrate nondiscriminatory access to OSS functions for local competitors in order to strengthen their own positions in the vertically combined local-interexchange services market, *i.e.*, "one-stop shopping," a penalty affecting their ability to compete in the long distance market is appropriate. Moreover, such a penalty is reasonably related to the purposes of the 1996 Act — strengthening competition in all markets and the promotion of one-stop shopping.

Accordingly, CompTel proposes where OSS functions are not available on a parity basis (where an ILEC has established performance standards) or consistent with SQMs (where an ILEC has not established standards above a certain threshold percentage of cases) then the offending ILEC should be prohibited from taking further orders for interexchange service from subscribers in the states(s) at issue for a definite period of time. A penalty of this sort, affecting the ILEC's market position with respect to vertically-integrated services, is required because a simple monetary penalty or liquidated damages will not provide sufficient deterrent, even if the penalties run into several million dollars.

¹² *Public Notice* at 2.

During any moratorium on orders, the ILEC should be required to make periodic reports on its compliance with its OSS obligations as a prerequisite to having the penalty period expire. If after expiration of the moratorium period, compliance with the parity and nondiscrimination standards is not demonstrated, the penalty period should be extended.

4. Technical Standards for Interfaces Should Be Developed in a Cooperative and Expedited Fashion

Access to ILEC OSS functions must be through appropriate interfaces that acknowledge use of readily available technologies, including technologies employed by the ILECs for themselves. As the Commission noted in the *Local Competition Order*, "an incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering."¹³

While CompTel generally agrees with this statement, it urges the FCC to adopt standards for different types of interfaces because diverse new entrants may have different needs and capabilities depending upon their subscriber volumes and resources. Large competitors, for example, may be able to use the electronic EDI Web GUI system to interface with ILEC OSS functions, and certainly this method should be considered.¹⁴ Smaller competitors, on the other hand, should have the ability to use a less costly, and possibly less efficient, method involving more manual intervention, *e.g.*, facsimile-based orders, if they choose to do so. In short, ILECs should be required to make several specific interface types available to accommodate the capabilities of various classes of competitors.

¹³ *Local Competition Order*, 11 FCC Rcd at 15,767.

¹⁴ Carriers with extremely large order volumes should be able to communicate directly through electronic bonding.

The sufficiency of each method should be that access to OSS functions is neither more nor less readily available as a result of the interface method chosen. In other words, any differences that users perceive between the similar services of an ILEC and a competitor should result from factors within the control of each carrier, not the consequence of discriminatory provisioning by the ILEC of an OSS function to itself and the competitor.¹⁵

The Commission, in conjunction with the requested rulemaking, should give industry fora and user groups a definite period of limited duration to develop technical standards. If these groups cannot develop consensus standards, then the FCC itself should expeditiously adopt detailed technical guidelines. To keep the industry and user groups on track in voluntary negotiations, the FCC should commit staff to moderate the meetings and invite the participation of a representative number of State commission staff.

5. A Negotiated Rulemaking Framework Under Strict Guidelines Should Be Used to Resolve or Narrow the Issues.

The Public Notice inquires whether a negotiated rulemaking should be used to develop OSS standards.¹⁶ CompTel believes that a negotiated rulemaking framework could prove very useful in identifying issues of the commentors upon which the FCC could focus its attention. However, for a negotiated rulemaking to work, the following conditions must be present:

- the ILECs must first report their current performance standards and measurement criteria to the FCC (and post them on the world wide web) for public inspection.

¹⁵ For manual intervention methods such as facsimile-based ordering, some asymmetry may be inevitable. However, any such lessening of performance standards should be specifically defined and tightly circumscribed.

¹⁶ *Public Notice* at 2.

- FCC staff and State commission representatives should be assigned to monitor and otherwise participate in the rulemaking negotiations.
- the negotiations must have a very strict deadline.

The importance of establishing uniform OSS standards, as described above, requires that a negotiated rulemaking be put on a fast track. The process cannot be allowed to stall. For this reason, FCC staff and State commission representatives must be present, and hard and fast deadlines must be laid down at the outset. Further, to allow concrete and meaningful discussions to commence rapidly, current ILEC OSS performance and measurement standards must be available in advance to participants for review.


6. Conclusion.

For the foregoing reasons, as well as those contained in the petition itself, the Commission should grant the Petition and work to establish specific, uniform OSS standards on an expedited basis.

Respectfully submitted,

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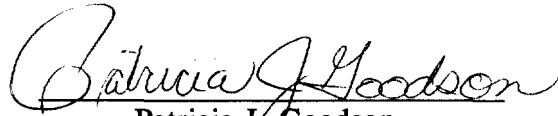
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **Comments of The Competitive Telecommunication Association** were hand-delivered this 10th day of July, 1997, to the following:

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